

## CRIMINAL REVISION.

*Before Mr. Justice Prinsep and Mr. Justice Grant.*

GOLUCK CHANDRA PAL AND OTHERS (PETITIONERS) v. KALI CHARAN DE (OPPOSITE PARTY.)\*

1886  
April 30.

*Criminal Procedure Code, s. 145—Penal Code, s. 188—Disobedience to order of Public Servant—Inquiry as to possession—Parties to inquiry.*

In May 1883 the District Magistrate of Tipperah held an inquiry as to the possession of certain lands claimed by *A* and *B*, and having found on the evidence taken by him that *A* was in possession, he passed an order on the 21st of May 1883, declaring that *A* was entitled to hold possession of the disputed land until evicted in due course of law, and forbidding *B* and all others to disturb *A*'s possession until such disturbance should be effected in due course of law. Previously to November 1885, *B* sold an eight-anna share of his interest in the disputed land to *C*, who at the time of his purchase had notice of the order of the 21st of May 1883. In November 1885, *B* and others went to the disputed lands, and attempted to turn *A* out of possession by force, and to compel the tenants of the lands to pay rent and give kabuliats to *B* and *C*. At the time that *B* and his companions went to the disputed land, the latter were aware of the order of the 21st of May 1883, though none of them was a party to the inquiry then made by the District Magistrate. In December 1885, they were all tried and found guilty of disobedience to an order duly promulgated by a public servant. *Held*, that the conviction was right.

*Semble*, that a reference by a Magistrate to a Police report which clearly sets out the probability of a breach of the peace is a sufficient statement of the reasons for the Magistrate's being satisfied of the existence of a dispute likely to cause a breach of the peace, within the meaning of s. 145 of the Code of Criminal Procedure.

In this case one of the accused, Bukshi Shonar, was tried and convicted under s. 145 of the Penal Code for harbouring persons hired for an unlawful assembly, while the others were tried and convicted for disobedience to an order duly promulgated by a public servant under s. 188 of the Penal Code. The facts of the case are as follows:—

Early in 1883, a dispute arose between Kutubudin, one of the accused, and rival zemindars named Nag as to the ownership

\* Criminal Revision No. 72 of 1886, against the order passed by Baboo Sarat Chandra Das, Deputy Magistrate of Tipperah, dated the 22nd of December 1885.

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of a certain piece of land of which both parties claimed to be in possession. In May 1883, the District Magistrate, Mr. Hopkins, in consequence of certain reports which he had received from the Police, held a proceeding under s. 145 of the Code of Criminal Procedure, and having come to the conclusion on the evidence that the Nag zemindars were in possession of the disputed lands, he recorded an order declaring that the Nag zemindars "are entitled to retain possession of Jowar Nilakhi," the disputed land, "until evicted in due course of law, and all parties, Kutubudin and all others, are forbidden to disturb such possession until such disturbance is effected in due course of law." This order was passed on the 21st of May 1883. Kutubudin applied to the Sessions Judge to cancel the order of the District Magistrate, but the application was rejected.

Some time before November 1885, Kutubudin sold a moiety of the disputed land to one Abdul Baree, who purchased with full knowledge of the order of the 21st of May 1883, and on the 21st of November 1885, one Kali Charan De, the tahsildar of the Nag zemindars, complained to the District Magistrate that Kutubudin and the other accused had gone in a body to Nilakhi armed with *latties* and spears, and had by force extorted money from the ryots of that place, and forced them to sign kabuliats in favour of Kutubudin and Abdul Baree. The District Magistrate made over the case to the Deputy Magistrate, who found that all the accused, with the exception of Bukshi Shonar, had, with full knowledge of the order of the 21st of May 1883, gone to Nilakhi for the purpose of supporting the claims of Kutubudin and Abdul Baree; he found the charge made by the tahsildar proved as against all but Bukshi Shonar, whom he found guilty of harbouring the others, knowing that they had been employed to become members of an unlawful assembly, and he sentenced them some to imprisonment and some to pay a fine. These findings and sentences were upheld by the District Magistrate on the 7th of January 1886. Thereupon the accused applied to the High Court under the provisions of s. 439 of the Code of Criminal Procedure, and obtained a rule calling upon the other side to show cause why the convictions should not be set aside.